

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2541**

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**Introduced by Assembly Member ~~Achadjian~~ Hall**

February 21, 2014

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~~An act to amend Section 53036 of the Government Code, relating to coastal property.~~ *An act to add Section 6546.14 to the Government Code, relating to transportation.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, ~~Achadjian~~ Hall. ~~Local agencies: real property transfers.~~ *Alameda Corridor Transportation Authority.*

*Existing law authorizes the Alameda Corridor Transportation Authority, a joint powers agency, to issue revenue bonds for the purpose of designing and constructing a consolidated transportation corridor to improve highway or rail access to the Ports of Long Beach and Los Angeles, with debt service on the bonds to be paid from various sources, including railroad or truck use fees.*

*This bill would require the authority to adopt and publish a tariff under which a use fee for movement of cargo on the Alameda Corridor rail system is imposed on users, defined to mean any person, company, or other entity that is named as the shipper or consignee on the ocean carrier bill of lading for export or import cargo or various other persons or entities, as specified. The bill would require the authority to contract with an independent 3rd-party collection agency to collect the use fee. The bill would require the tariff to include certain provisions for its enforcement in case of delinquency, including refusal of service and a lien on cargo, and would also require the tariff to include a prohibition against payment, waiver, advancement, or absorbtion of the use fee by*

*any ocean common carrier or railroad operator on behalf of a user. The bill would require a user to waive any damages or other claims as a result of enforcement of the tariff, and would provide that the only remedy in case of error would be the waiver or refund of the use fee applicable to the cargo. The bill would require railroad operators operating on the corridor to provide the authority with certain information about a user's cargo. The bill would enact other related provisions. By requiring the authority to take various actions, the bill would thereby impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law prohibits a local agency from selling real property owned by it and lying between the high water line of the Pacific Ocean and a public street or highway without reserving the public's right of access to the ocean over that property, as specified.~~

~~This bill would make technical, nonsubstantive changes to that requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. This act shall be known, and may be cited, as the
- 2     Alameda Corridor Transportation Authority Corridor Use Fee
- 3     Act.
- 4     SEC. 2. Section 6546.14 is added to the Government Code, to
- 5     read:
- 6     6546.14. (a) As used in this section, the following terms have
- 7     the following meanings:
- 8     (1) "ACTA" means the Alameda Corridor Transportation
- 9     Authority.
- 10    (2) "Tariff" means the schedule of use fees adopted by the ACTA
- 11    and published on its Internet Web site or otherwise.

1     (3) *“Use fee” means a fee applicable to the transportation on*  
2 *the Alameda Corridor rail system of any cargo, including, but not*  
3 *limited to, containers, vehicles, bulk cargo, break-bulk cargo,*  
4 *general cargo, heavy lift cargo, and other special cargo.*

5     (4) *“User,” with respect to cargo subject to the use fee, means*  
6 *any of the following:*

7     (A) *Any person, company, or other entity that is named as the*  
8 *shipper or consignee on the ocean common carrier bill of lading*  
9 *issued for export or import cargo, or any person owning or entitled*  
10 *to the possession of the export or import cargo or having a past*  
11 *or future interest in that cargo.*

12     (B) *In the case of negotiable bills of lading, any other person,*  
13 *company, or other entity that is a bona fide holder of the bill of*  
14 *lading or who is entitled to receive delivery of export or import*  
15 *cargo.*

16     (C) *Any other bailor of export or import cargo.*

17     (b) (1) *The ACTA shall contract with an independent third-party*  
18 *collection agency to collect the use fee from users.*

19     (2) *The ACTA shall adopt and publish a tariff that requires all*  
20 *users to pay the use fee to the independent third-party collection*  
21 *agency prior to the cargo entering the Alameda Corridor rail*  
22 *system, unless credit arrangements are agreed to by the*  
23 *independent third-party collection agency. All users, with respect*  
24 *to a particular unit of cargo, shall be jointly and severably liable*  
25 *for the payment of the use fee.*

26     (3) *The ACTA shall include in the tariff a prohibition that*  
27 *ensures that the use fee is not paid, waived, advanced, or absorbed*  
28 *by any ocean common carrier, as that term is defined in the federal*  
29 *Shipping Act of 1984 (46 U.S.C. Sec. 40101 and following), as*  
30 *amended, or by any railroad operator that operates on the Alameda*  
31 *Corridor rail system.*

32     (4) *The ACTA shall include in the tariff the terms of enforcement*  
33 *of the tariff, including, but not limited to, a provision that requires*  
34 *a railroad operator that operates on the Alameda Corridor rail*  
35 *system to refuse service to a user that is delinquent in paying the*  
36 *use fee and a provision that imposes a lien on the cargo of a user*  
37 *that is delinquent in paying the use fee. Refusing service to a user*  
38 *shall include a prohibition on the user’s cargo leaving the facilities*  
39 *of the railroad operator.*

(5) The ACTA shall include in the tariff a requirement for a user to waive any direct, indirect, or consequential damages, with respect to the ACTA, the independent third-party collection agency, the applicable railroad operator, and the applicable ocean common carrier, that may be suffered by a user as a result of the refusal of service or enforcement of any lien related to imposition to the use fee and any delinquency by the user in its payment. The tariff shall also include a requirement for a user to waive any direct, indirect, or consequential damages for any other claim relating to or arising out of the terms of the tariff or a contract relevant to the use fee. If service is refused to a user, or a lien is enforced against any of the user's cargo, and it is subsequently determined that the refusal of service or enforcement of the lien was mistaken, unlawful, or otherwise improper, the sole and exclusive remedy of the user shall be the waiver or refund of the use fee otherwise applicable to the cargo.

(6) Railroad operators operating on the Alameda Corridor rail system shall independently provide the ACTA with information about a user's cargo for the purposes of collecting the use fee and enforcing the terms of the tariff in order to collect the use fee.

SEC. 3. Notwithstanding Section 16 of Article IV of the California Constitution, the Legislature hereby finds and declares that due to a situation unique to the area served by the Alameda Corridor Transportation Authority, a general statute cannot be made applicable to the area in question and it is therefore necessary to enact a special statute.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 53036 of the Government Code is amended to read:~~

~~53036. (a) A local agency as defined in Section 54951 shall not sell, lease, or otherwise transfer real property owned by it and positioned between the high water line of the Pacific Ocean and the public street or highway nearest the Pacific Ocean without reserving to the public the right of access over that real property, unless the local agency or its grantee shall make available to the public an alternate route which, in the judgment of the local agency,~~

1 ~~gives equal or greater public access to the Pacific Ocean in the~~  
2 ~~same immediate vicinity.~~  
3 ~~(b) Any public access right or rights identified or provided~~  
4 ~~pursuant to this section shall be expressly described in any~~  
5 ~~document effecting the sale, lease, or transfer of that real property.~~

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